No. 382.

Motion for Leave to Intervene

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Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 382.

JOHN A. HUMBIRD ET AL., APPELLANTS,

v.

WALDO A. AVERY ET AL., APPELLEES.

Motion on Behalf of the United States for Leave to Intervene, and by all Parties for the Certification of the Entire Record to this Court, and Advancement of the Cause for Hearing.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 4771

Supreme Court of the United States

OCTOBER TERM, 1902.

No. 382.

JOHN A. HUMBIRD ET AL.

v.

WALDO A. AVERY ET AL.

Motion on Behalf of the United States for Leave to Intervene, and also for Certification of Entire Record to this Court for Advancement of Cause for Hearing.

The Solicitor General, on behalf of the United States, moves the court for leave:

(1) To intervene in the above-entitled cause and participate in argument therein;

(2) To have the entire record and cause sent up by the circuit court of appeals to this court for its consideration; and

(3) To advance the cause for hearing.

As cause for this motion it is shown:

(1.)

The cause presents several important and difficult questions of law, the determination of which by this court is necessary to enable the Interior Department to proceed with

the adjustment of the Northern Pacific land grant, and to properly administer subsequent laws relating to that grant.

(2.)

There are several other law questions presented in the cause, the determination of which is as important to public and private interests, and to future proceedings in the Interior Department, as is the determination of the questions certified by the circuit court of appeals.

(3.)

The cause presents several questions of law of general public interest which vitally affect the public domain of the United States, the Northern Pacific Railway Company, numerous purchasers from that company, and numerous claimants adverse to that company and its purchasers.

(4.)

The questions of law presented in said cause are of such a character and so vitally affect the United States and the administration of its public land laws, including the land grant to the Northern Pacific Railway Company, that the United States should be heard by counsel before determination thereof by this court.

JOHN K. RICHARDS,
Solicitor General.
WILLIS VAN DEVANTER,
Assistant Attorney General.

Motion to Require Whole Cause to be Sent up from Circuit Court of Appeals, and Motion to Advance.

To the Honorable the Supreme Court of the United States:

Come now the parties to the above-entitled cause and join in moving the court as follows:

I.

For an order requiring the whole record and cause above entitled to be sent up by the circuit court of appeals to this court for its consideration.

II.

For an order advancing the said cause for hearing before this court upon the ground that the United States is concerned in said cause and that it involves matters of general public interest.

This motion is based on the record, certified copy of which is herewith submitted, and on the statement hereto attached of the questions arising upon the record.

H. H. HOYT,
Solicitor for Waldo A. Avery and All Other Defendants for Whom I Appear.
JAQUES & HUDSON,
Solicitors for Franklin Lumber Co.
M. H. STANFORD,
Sol. and of Counsel Le Sure Lumber Co.
L. C. HARRIS,
Solicitor for Def't Alger-Smith & Co.
JOHN G. WILLIAMS,
Solicitor for J. & G. K. Wentworth.

C. W. BUNN,
BILLSON & CONGDON,
J. B. KERR,
H. OLDENBURG,
Solicitors for Complainants.

Statement.

The above-entitled cause is a suit in equity which was commenced in the circuit court of the United States for the district of Minnesota by Messrs. Humbird and Weyerhaeuser, complainants, against the defendants above named, to secure a permanent injunction against the cutting of timber on about ten thousand acres of land claimed by the complainants, and to secure a decree adjudging the defendants the holders of the legal title in trust for the benefit of the complainants as to certain of these lands upon which patents had been issued by the United States, and a decree adjudging the complainants to be the equitable owners of all the lands (Transcript, pp. 14 and 15).

The source of title of the complainants is a conveyance from the Northern Pacific Railway Company, which is the successor in interest of the Northern Pacific Railroad Company (pp. 448–478, 513, 516). The title of the Northern Pacific Railroad Company depends upon the grant by act of Congress of July 2, 1864 (13 Stat., 365), and the joint resolution of Congress of May 31, 1870 (16 Stat., 378). The conveyance to the Northern Pacific Railway Company bore date September 22, 1899, and its deed to the plaintiff bore date January 19, 1900 (pp. 459, 468, 499, 503).

Part of the lands lie in the first indemnity belt created by the act of July 2, 1864, and part of the lands lie in the second indemnity belt created by the joint resolution of May 31, 1870. The lands are all situated in the State of Minnesota on the north shore of Lake Superior and east of the terminal limit established by the Secretary of the Interior at Duluth in 1896.

This court held in *United States v. Northern Pacific Railroad Company*, 177 U. S., 435, and in *Doherty v. Northern Pacific Railway Company*, 177 U. S., 421, that the true terminal was at Ashland, Wisconsin.

The titles of the defendants are all based upon entries made under the public land laws after the terminal limit at Duluth had been established by the Secretary of the Interior in 1896 and after these lands had been thrown open to entry as public lands of the United States in pursuance of the decision of the Secretary of the Interior so fixing the terminal, and before the decision by this court holding that the terminus was at Ashland (pp. 16–24).

In 1883, the Northern Pacific Railroad Company filed in the proper district land office selection lists specifying all of these lands as indemnity under the provisions of the act of July 2, 1864, and the joint resolution of May 31, 1870 (pp. 325, 368, 406). The said selection lists so far as they related to first indemnity lands made no specification of the lost lands in lieu of which the selections were made and so far as concerned the second indemnity lands the lists specified the losses in bulk but not tract for tract. In 1887 the railroad company filed in the proper local land office a list in bulk of the lost lands relied upon for the said first indemnity selections, and in 1893 filed rearranged lists of said selections of both first and second indemnity lands in which lost lands were specified tract for tract opposite the several tracts selected (pp. 346, 379, 441). All these lists were received and certified in the usual form by the local land officers, and duplicates thereof forwarded to the office of the Commissioner of the General Land Office at Washington. But the Secretary of the Interior never certified his approval of any of the selections, but subsequently canceled them and restored the lands to the public domain, after which the entries under which the defendants claim were made and allowed.

July 1, 1898, Congress incorporated in the sundry civil appropriation act (30 Stat. at Large, chapter 546, page 620) a provision for the adjustment of controversies relating to entries within the limits of the grant along the whole line

of the Northern Pacific road. A copy of this provision is hereto appended marked "Exhibit A."

Of the lands in question a portion had been patented to the several defendants under their respective entries prior to the passage of the act of 1898. At the time of the passage of the act of 1898, a portion of the lands in question had been entered for which no patents have been issued. Since January 1, 1898, a portion of the lands in question have been entered by the defendants. At the time of the filing of complainants' bill, patents had been issued for a portion of the lands in question, and the remainder were covered by final certificates of entry, which purport to entitle the holders to receive patents as soon as they can be issued in the ordinary course of business by the Land Department.

The validity of all these patents and entries is conceded by the complainants unless affected by rights previously vested in the railroad company.

Of the patented lands, a portion lie in the first and a portion lie in the second indemnity limits of the railroad grant. Of the lands covered by final certificates a portion lie in the first and a portion in the second indemnity limits.

In the courts below the defendants contended that the bill should be dismissed upon the grounds:

First, that the selections of the railroad company were not valid (*a*) because, as claimed by the defendants, the selection lists failed to contain certain affidavits required by the regulations of the Interior Department, (*b*) that the lands selected were not shown to have been the indemnity lands nearest the lands lost from the place limits, (*c*) that lands were selected as indemnity upon one side of the road in lieu of lands lost from the place limits of the grant on the other side of the road, (*d*) that it was not shown by the complainants that the railroad company had paid the costs of surveying the land as required by law, (*e*) that the complainants had failed to show such losses from the place limits of the grant as would entitle it to select lands in the first indem-

nity limits, (*f*) that the complainants had failed to show that the railroad company was entitled to select any lands in the second indemnity limits, (*g*) that certain of the lost lands specified as bases for selections of lands in the second indemnity limits were not lost at such times and under such circumstances as to make them valid bases for selections within the second indemnity limits, (*h*) that no approval of any of the selections had been made by the Secretary of the Interior and that the railroad company acquired no rights in the absence of such approval;

Second, that the court had no jurisdiction of the subject-matter so as to grant relief of any kind as to those of the lands in question which were unpatented at the commencement of the suit;

Third, that the Northern Pacific Railway Company as successor to the Northern Pacific Railroad Company had accepted the provisions of the act of 1898, and had become obligated to relinquish in favor of the defendants all the lands in controversy.

In the courts below the complainants contended:

First, that the selections of the lands in question by the railroad company were in strict compliance with the regulations of the Secretary of the Interior and in compliance with the law, and that the selections were of lands properly subject to such selections and in lieu of lands for which the railroad company was entitled to receive indemnity, and that the subsequent erroneous disposition of the lands by the Secretary of the Interior (whether patents have issued or not) after the railroad company had acquired a vested right therein entitled the complainants to maintain this suit notwithstanding no formal approval of the selections had been made;

Second, that the interest of the complainants in the lands in question which had been patented was such as to entitle them to a decree holding the defendants trustees of the legal title;

Third, that the interest of the complainants in the unpatented lands was such a vested interest as entitled the complainants to a decree establishing their interests and restraining the defendants from denuding the lands of timber and destroying their value;

Fourth, that only such lands were affected by the act of 1898 as remained unsold in the hands of the railroad company at the time when they were included by the Secretary of the Interior in his list of contested lands contemplated by that act;

Fifth, that the act of 1898 had no application to lands patented either to the railroad company or to entrymen before its passage;

Sixth, that the act of 1898 is applicable only to lands claimed by actual settlers; whereas many of the entries of defendants were made under the timber and stone land act and other acts not requiring actual settlement;

Seventh, that there was no acceptance of the provisions of the act of 1898 by the Northern Pacific Railroad Company, and that when on July 21, 1898, the provisions of that act were accepted by the Northern Pacific Railway Company, it had not succeeded to the interest of the Northern Pacific Railroad Company in any of these lands (pp. 459–468).

The circuit court held that the act of 1898 applied to the lands patented both before and after its passage, and further held that as to the unpatented lands covered by final certificates of entry, the court had no jurisdiction.

The circuit court of appeals has certified to this court only two of the many Federal questions thus involved in the case. The certified questions are as follows:

"1. Is the act of July, 1898 (*vide* 30 Stat., pp. 620, 621), applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

"2. Has the circuit court of the United States for the district of Minnesota or any court jurisdiction as respects

the lands n controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?"

Copy of this certificate is hereunto appended, marked "Exhibit B."

It is apparent from the foregoing statement that the instructions of this court upon the questions of law submitted to it by the circuit court of appeals will not determine this controversy. The various contentions of both the complainants and defendants present Federal questions, and notwithstanding the advice of this court upon the questions certified, any decree which may be entered by the circuit court of appeals must inevitably be followed by an appeal to this court, which will involve an examination and consideration of the whole record and the determination of the questions which have been already urged as above set forth. Unless the entire case is now heard the effect of the certification must be to prolong the life of the litigation for at least two years beyond its ordinary course.

That the conflicting claims of title involved in this suit are matters of general public interest in which the Government is concerned, would seem to clearly follow from the well-established principle that the Government is so far concerned in the correct administration of its land laws and in the ultimate award of its public lands to the persons rightfully entitled thereto, that it is entitled to maintain a suit for the cancellation of a patent wrongfully issued to one person, in order that it may be in position to award the land to another. With respect, for instance, to such of these lands as have been patented, the Government might unquestionably of its own motion have instituted a suit to set aside

the patents issued to the defendants in order that new patents might issue to the grantees of the railroad company if the latter are equitably entitled to the lands; and as the concernment of the Government in the premises is thus of such a character as to enable it to institute in its own name a suit to correct such errors, if any, as may have been involved in the issuance of these patents, it must also be sufficient to justify the advancement of the cause under the fifth subdivision of rule 26.

H. H. HOYT,
Solicitor for Waldo A. Avery et al., Defendants.
JAQUES & HUDSON,
Solicitors for Franklin Lumber Co.
M. H. STANFORD,
Sol. and of Counsel for Def't Le Sure L. Co.
L. C. HARRIS,
Solicitor for Def't Alger-Smith & Co.
JOHN G. WILLIAMS,
Solicitor for J. & G. K. Wentworth.

C. W. BUNN,
BILLSON & CONGDON,
J. B. KERR,
H. OLDENBURG,
Solicitors for Complainants.

Exhibit A.

Extract from Act of Congress Approved July 1st, 1898, Chapter 546 (30 Stat., p. 620).

That where, prior to January first, eighteen hundred and ninety-eight, the whole or any part of an odd-numbered section, in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of the grantee or its lawful successor is claimed to have attached by definite location or selection, has been purchased directly from the United States or settled upon or claimed in good faith by any qualified settler under color of title or claim of right under any law of the United States or any ruling of the Interior Department, and where purchaser, settler or claimant refuses to transfer his entry as hereinafter provided, the railroad grantee or its successor in interest, upon a proper relinquishment thereof, shall be entitled to select in lieu of the land relinquished an equal quantity of public lands, surveyed or unsurveyed, not mineral or reserved and not valuable for stone, iron or coal, and free from valid adverse claim or not occupied by settlers at the time of such selection, situated within any State or Territory into which such railroad grant extends, and patents shall issue for the land so selected as though it had been originally granted; but all selections of unsurveyed lands shall be of odd-numbered sections, to be identified by the survey when made, and patent therefor shall issue to and in the name of the corporation surrendering the lands before mentioned, and such patents shall not issue until after the survey: *Provided, however*, That the Secretary of the Interior shall from time to time ascertain and, as soon as conveniently may be done, cause to be prepared and delivered to the said railroad grantee or its successor in interest, a list or lists of the several tracts which have been purchased or settled upon or occupied as aforesaid, and are now claimed by said purchasers or occupants, their heirs or assigns, according to the smallest Government subdivisions. And all right, title and interest of the said railroad grantee or its successor in interest in and to any of such tracts, which the said railroad grantee or its successor in interest may relinquish hereunder shall revert to the United States, and

such tracts shall be treated, under the laws thereof, in the same manner as if no rights thereto had ever vested in the said railroad grantee, and all qualified persons who have occupied and may be on said lands as herein provided, or who have purchased said lands in good faith as aforesaid, their heirs and assigns, shall be permitted to prove their titles to said lands according to law, as if said grant had never been made; and upon such relinquishment said Northern Pacific Railroad Company or its lawful successor in interest may proceed to select, in the manner hereinbefore provided, lands in lieu of those relinquished, and patents shall issue therefor: *Provided further*, That the railroad grantee or its successor in interest shall accept the said list or lists so to be made by the Secretary of the Interior as conclusive with respect to the particular lands to be relinquished by it, but it shall not be bound to relinquish lands sold or contracted by it or lands which it uses or needs for railroad purposes, or lands valuable for stone, iron or coal: *And provided further*, That whenever any qualified settler shall in good faith make settlement in pursuance of existing law upon any odd-numbered sections of unsurveyed public lands within the said railroad grant to which the right of such railroad grantee or its successor in interest has attached, then upon proof thereof satisfactory to the Secretary of the Interior, and a due relinquishment of the prior railroad right, other lands may be selected in lieu thereof by said railroad grantee or its successor in interest, as hereinbefore provided, and patents shall issue therefor: And provided further, that nothing herein contained shall be construed as intended or having the effect to recognize the Northern Pacific Railway Company as the lawful successor of the Northern Pacific Railroad Company in the ownership of the lands granted by the United States to the Northern Pacific Railroad Company, under and by virtue of foreclosure proceedings against said Northern Pacific Railroad Company in the courts of the United States; but the legal question whether the said Northern Pacific Railway Company is such lawful successor of the Northern Pacific Railroad Company, should the question be raised, shall be determined wholly without reference to the provisions of this act, and nothing in this act shall be construed as enlarging the quantity of land which the said Northern Pacific Railroad Company is entitled

to under laws heretofore enacted; and provided further, that all qualified settlers, their heirs or assigns, who, prior to January first, eighteen hundred and ninety-eight, purchased or settled upon or claimed in good faith, under color of title or claim of right under any law of the United States or any ruling of the Interior Department, any part of an odd-numbered section in either the granted or indemnity limits of the land grant to the Northern Pacific Railroad Company, to which the right of such grantee or its lawful successor is claimed to have attached by definite location or selection, may in lieu thereof transfer their claims to an equal quantity of public lands surveyed or unsurveyed, not mineral or reserved, and not valuable for stone, iron or coal, and free from valid adverse claim, or not occupied by a settler at the time of such entry, situated in any State or Territory into which said railroad grant extends, and make proof therefor as in other cases provided; and, in making such proof, credit shall be given for the period of their *bona fide* residence and amount of their improvements upon their respective claims in the said granted or indemnity limits of the land grant to the said Northern Pacific Railroad Company the same as if made upon the tract to which the transfer is made; and before the Secretary of the Interior shall cause to be prepared and delivered to said railroad grantee or its successor in interest any list or lists of the several tracts which have been purchased or settled upon or occupied as hereinbefore provided, he shall notify the purchaser, settler or claimant, his heirs or assigns, claiming against said railroad company, of his right to transfer his entry or claim, as herein provided, and shall give him or them option to take lieu lands for those claimed by him or them, or hold his claim and allow the said railroad company to do so under the terms of this act.

EXHIBIT "B."

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

versus

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

On certificate from the United States circuit court of appeals of the eighth circuit.

The United States circuit court of appeals of the eighth circuit sitting at the city of St. Paul in the State of Minnesota on

the sixteenth day of June, 1902, hereby certifies that from the record in this court in the case above entitled in which John A. Humbird and Frederick A. Weyerhaeuser are appellants and Waldo A. Avery and others are appellees, and which is now pending in this court on an appeal from a decree of the circuit court of the district of Minnesota, these facts appear:

I.

On April 17, 1900, the appellants exhibited their bill against the appellees in the United States circuit court for the district of Minnesota wherein they alleged that by virtue of the congressional grants of land to the Northern Pacific Railroad Company (13 Stat., chapter 217, page 367; 16 Stat. 378, 379) the existence of the conditions and the performance of the acts requisite to entitle that company to the lands described in the bill and the subsequent conveyance of its right to these lands to the appellants they had become the owners of the entire equitable and beneficial interest in the 10,539 acres of land in the State of Minnesota, described in the bill, but that the Secretary of the Interior solely by reason of his erroneous decision that the eastern terminus of the Northern Pacific Railroad Company was at Duluth instead of at Ashland had permitted the appellees to enter these lands, had issued to them final receipts or final certificates to all the lands and had issued and delivered to them patents to more than 3,400 acres of these lands.

The appellants prayed for the usual decree to the effect that the appellees held the legal title to the lands in trust for them and that the trust should be executed. The appellees answered the bill, denied its material averments and alleged that they were entitled to the land under the provisions of the sundry civil appropriation act of July 1, 1898 (30 Stat. chapter 546, page 620). Evidence was produced, a final hearing was had in the circuit court, that court dismissed the bill and in due time the complainants appealed to this court from this decree of dismissal and their case is here pending and undetermined.

II.

The lands involved in this suit are within the indemnity limits of the grant to the Northern Pacific Railroad Company and there was such a deficiency of lands in the place limits

and in the first indemnity limits of that grant that the railroad company was entitled to select, and to receive patents to these lands under the congressional grant to it (13 Stat. chapter 217, section 3, pages 367, 368; 16 Stat. 379). In October, 1883, the Northern Pacific Railroad Company selected these lands in lieu of lands lost from its grant of lands in the place and in the first indemnity limits under the direction and in accordance with the regulations of the Secretary of the Interior. Its selection of these lands was evidenced by lists thereof which were filed in the proper local land office at Duluth in the State of Minnesota in October, 1883, which were accepted and approved by the register and receiver of that office and were immediately transmitted to the Commissioner of the General Land Office. Afterwards and prior to May, 1893, in compliance with directions of the Secretary of the Interior, the company specified the particular lands lost from its grant in lieu of which these lands had been selected and matched each tract selected with a tract lost. In making its selection of these lands in 1883 it complied with the regulations and directions of the Secretary, and from that time to this it has complied with every lawful regulation and direction of the Secretary of the Interior or the Commissioner of the General Land Office relative to the selection of these lands, so that it was entitled to the approval of its selection thereof and to patents to them for at least five years before the act of July 1, 1898, (30 Stat. 621) was passed. Notwithstanding the grant to the company and the selection of said lands in the manner and form aforesaid, the Secretary of the Interior failed to approve said selection lists and failed to issue patents therefor to the railroad company until and after August 27, 1896, at which latter date he erroneously decided that the eastern terminus of the Northern Pacific railroad was at Duluth, when he should have decided that it was at Ashland, Wisconsin. As the lands in controversy lie east of the city of Duluth in the State of Minnesota, the company would not have been entitled to select the lands as part of the grant if the decision of the Secretary as to the eastern terminus of the company's road had been right, but it was entitled to select them, as the true terminus of said road as it was afterwards decided was at Ashland, Wisconsin. In consequence of the erroneous ruling of the Secretary of the Interior as to the eastern terminus of the railroad, the lists of selections aforesaid have

never as yet been approved by the Secretary of the Interior but after such erroneous decision was made, in the year 1896, the Secretary of the Interior caused the entries of said lands by the company to be cancelled, declared the lands open to settlement and entry, and proceeded to issue final receipts and final certificates, and, in some instances, patents for said lands, to the appellees or their grantors, under the public land laws of the United States, holding that the railroad company had no right thereto.

III.

Prior to the passage of the act of July 1, 1898, the Secretary of the Interior had, pursuant to his erroneous ruling relative to the eastern terminus of the railroad in question, caused patents to be issued and delivered to the appellees or their grantors for about thirty-four hundred (3400) acres of the lands in question in this suit.

IV.

At the time of the passage of the act of July 1, 1898, (30 Stat. 621) about 2800 acres of the land in question in this suit had been entered by the appellees or their grantors prior to January 1, 1898, but no patents therefor had been issued.

V.

Since January 1, 1898, the appellees or their grantors have been permitted to enter about 5000 acres of the lands in controversy in this action. The situation at the time of the filing of the bill of complaint herein was as follows: Of the lands claimed by the appellants as successors in interest of the Northern Pacific Railroad Company about 3400 acres thereof were held by the appellees under patents issued by the Government prior to July 1, 1898. For the residue of the lands the appellees held final receipts and final certificates. Such final receipts and final certificates as respects about 5000 acres being for tracts of land that were entered subsequent to January 1, 1898. As respects the lands for which final receipts and final certificates have been issued nothing, so far as appears, remains to be done by the executive department of the Government save the issuance of patents.

VI.

The Northern Pacific Railroad Company accepted the terms and provisions of the act of July 1, 1898, by a resolution duly enacted and approved by its board of directors, and subsequently and before the commencement of this suit all of its right, title and interest in all of the lands in question was duly conveyed to, and vested in the appellants.

And the United States circuit court of appeals hereby certifies that to the end that it may properly decide this case it desires the advice and instruction of the Supreme Court of the United States upon the following questions of law, which are duly raised and presented by the record herein and the decision whereof is necessary to a correct determination of the case:

1. Is the act of July 1, 1898, (*vide* 30 Stat., pp. 620, 621) applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

2. Has the circuit court of the United States for the district of Minnesota or any court *of* jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 16th day of June, 1902, at St. Paul in the State of Minnesota and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals and that it be forwarded by the clerk of said court to the Supreme Court of the United States.

(Signed) WALTER H. SANBORN,
AMOS M. THAYER,
JOHN E. CARLAND,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL., Appellees.
No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

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Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1902, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the fifth day of May, A. D. 1902, before the Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges, and Honorable John E. Carland, district judge.

Attest:

[Seal U. S. C. C. A.]

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of November, A. D. 1901, a transcript of record pursuant to an appeal from the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, wherein John A. Humbird and Frederick Weyerhaeuser, were appellants, and Waldo A. Avery and

others, were appellees, which said transcript of record was docketed in said circuit court of appeals as number 1673.

That thereafter the following proceedings were had in said cause, in said circuit court of appeals, viz:

(*Appearance for Appellants.*)

On the twenty-seventh day of November, A. D. 1901, an appearance of counsel for appellants was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

J. A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

The clerk will enter *my* appearance as counsel for the appellants.

H. OLDENBURG.
WM. W. BILLSON.
CHESTER A. CONGDON.
D. A. DICKINSON.
JAMES B. KERR.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. J. A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Nov. 27, 1901. John D. Jordan, clerk. H. Oldenburg, Wm. W. Billson, Chester A. Congdon, D. A. Dickinson, James B. Kerr, counsel for appellants.

(*Appearance for Appellants.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. C. W. Bunn, as counsel for appellants was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

The clerk will enter my appearance as counsel for the appellants.

C. W. BUNN.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902. John D. Jordan clerk. C. W. Bunn, counsel for appellants.

(*Appearance for Appellees.*)

And on the twenty-seventh day of November, A. D. 1901, an appearance of Mr. L. C. Harris, as counsel for certain appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Complainants and Appellants,
vs.
WALDO A. AVERY, OLEAN LAND COMPANY, ALGER-SMITH & Company, *et al.*, Defendants and Appellees.

You will please enter my appearance as counsel for the defendants, The Olean Land Company and Alger-Smith & Company, in the above-entitled action.

L. C. HARRIS.

Dated November 4, A. D. 1901.

To the clerk of the circuit court of appeals.

(Endorsed:) No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance for Olean Land Company and Alger-Smith and Company, appellees. Filed Nov. 27, 1901. John D. Jordan, clerk. L. C. Harris, Duluth, Minn., counsel for appellees.

(*Appearance for Appellees.*)

And on the nineteenth day of March, A. D. 1902, an appearance of Mr. H. H. Hoyt, as counsel for the appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

The clerk will enter my appearance as counsel for the appellees.

H. H. HOYT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird *et al.*, appellants, *vs.* Waldo A. Avery *et al.* Appearance. Filed Mar. 19, 1902. John D. Jordan, clerk. H. H. Hoyt, 310 Manhattan building, Duluth, Minn., counsel for appellees.

(*Appearance for Appellees.*)

And on the thirty-first day of March, A. D. 1902, an appearance of Mr. M. H. Stanford, as counsel for certain appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. In Equity.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

vs.

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND Company, Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie G. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelly, Otto Carlson, Alger Smith & Company, Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Morris Realty Company, Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward E. Manwaring, B. C. Cook, William O'Brien, Franklin Lumber Company, S. J. Cusson, Johnson-Wentworth Company, Cloquet Lumber Company, Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Respondents and Appellees.

The clerk of this court will please enter my appearance as solicitor and counsel for The Lesure Lumber Company, one of the respondents in the above-entitled case.

Dated this 29th day of March, A. D. 1902.

M. H. STANFORD,
Solicitor and Counsel for Respondents and Appellees Lesure Lumber Company.

To John D. Jordan, clerk of said court.

(Endorsed:) 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed Mar. 31, 1902. John D. Jordan, clerk. M. H. Stanford, counsel for certain appellees.

(*Appearance for Appellees.*)

And on the thirteenth day of May, A. D. 1902, an appearance of Mr. Benton Hanchett, as counsel for the appellees, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

The clerk will enter my appearance as counsel for the appellees.

BENTON HANCHETT.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Appearance. Filed May 13, 1902, John D. Jordan, clerk. Benton Hanchett, Saginaw, Mich., counsel for appellees.

(*Argument Commenced.*)

And on the thirteenth day of May, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

TUESDAY, *May* 13, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, the time for argument of this cause was extended one hour to each side, upon application of counsel for appellants.

Whereupon, argument was commenced by Mr. C. W. Bunn, for the appellants and continued by Mr. Benton Hanchett for appellees, and the hour of adjournment having arrived further argument was postponed until tomorrow.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1902, in the record of proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

WEDNESDAY, *May* 14, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been called for further hearing, argument was continued by Mr. Hanchett for appellees and concluded by Mr. William W. Billson for appellants.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Order to Certify Questions to Supreme Court.*)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals, is an order to certify questions to the Supreme Court of the United States, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *June* 16, 1902.

JOHN A. HUMBIRD ET AL., Appellants,
vs.
WALDO A. AVERY ET AL. } No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

In this cause it is now here ordered that certain questions arising upon the record herein, be, and the same are hereby ordered to be certified to the Supreme Court of the United States under the provisions of section six of the act of Congress approved March 3, 1891, for the instruction of the said Supreme Court to this court upon said questions.

Said certificate is as follows, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

versus

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN LAND Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees.

On certificate from the United States circuit court of appeals of the eighth circuit.

The United States circuit court of appeals of the eighth circuit sitting at the city of St. Paul in the State of Minnesota on the sixteenth day of June, 1902, hereby certifies that

from the record in this court in the case above entitled in which John A. Humbird and Frederick A. Weyerhaeuser are appellants and Waldo A. Avery and others are appellees, and which is now pending in this court on an appeal from a decree of the circuit court of the district of Minnesota, these facts appear:

I.

On April 17, 1900, the appellants exhibited their bill against the appellees in the United States circuit court for the district of Minnesota wherein they alleged that by virtue of the congressional grants of land to the Northern Pacific Railroad Company (13 Stat., chapter 217, page 367; 16 Stat. 378, 379) the existence of the conditions and the performance of the acts requisite to entitle that company to the lands described in the bill and the subsequent conveyance of its right to these lands to the appellants they had become the owners of the entire equitable and beneficial interest in the 10,539 acres of land in the State of Minnesota, described in the bill, but that the Secretary of the Interior solely by reason of his erroneous decision that the eastern terminus of the Northern Pacific Railroad Company was at Duluth instead of at Ashland had permitted the appellees to enter these lands, had issued to them final receipts or final certificates to all the lands and had issued and delivered to them patents to more than 3400 acres of these lands.

The appellants prayed for the usual decree to the effect that the appellees held the legal title to the lands in trust for them and that the trust should be executed. The appellees answered the bill, denied its material averments and alleged that they were entitled to the land under the provisions of the sundry civil appropriation act of July 1, 1898 (30 Stat., chapter 546, page 620). Evidence was produced, a final hearing was had in the circuit court, that court dismissed the bill and in due time the complainants appealed to this court from this decree of dismissal and their case is here pending and undetermined.

II.

The lands involved in this suit are within the indemnity limits of the grant to the Northern Pacific Railroad Company and there was such a deficiency of lands in the place limits and in the first indemnity limits of that grant that

the railroad company was entitled to select, and to receive patents to these lands under the congressional grant to it (13 Stat., chapter 217, section 3, pages 367, 368; 16 Stat. 379). In October, 1883, the Northern Pacific Railroad Company selected these lands in lieu of lands lost from its grant of lands in the place and in the first indemnity limits under the direction and in accordance with the regulations of the Secretary of the Interior. Its selection of these lands was evidenced by lists thereof which were filed in the proper local land office at Duluth in the State of Minnesota in October, 1883, which were accepted and approved by the register and receiver of that office and were immediately transmitted to the Commissioner of the General Land Office. Afterwards and prior to May, 1893, in compliance with directions of the Secretary of the Interior, the company specified the particular lands lost from its grant in lieu of which these lands had been selected and matched each tract selected with a tract lost. In making its selection of these lands in 1883 it complied with the regulations and directions of the Secretary, and from that time to this it has complied with every lawful regulation and direction of the Secretary of the Interior or the Commissioner of the General Land Office relative to the selection of these lands, so that it was entitled to the approval of its selection thereof and to patents to them for at least five years before the act of July 1, 1898 (30 Stat., 621), was passed. Notwithstanding the grant to the company and the selection of said lands in the manner and form aforesaid, the Secretary of the Interior failed to approve said selection lists and failed to issue patents therefor to the railroad company until and after August 27, 1896, at which latter date he erroneously decided that the eastern terminus of the Northern Pacific railroad was at Duluth, when he should have decided that it was at Ashland, Wisconsin. As the lands in controversy lie east of the city of Duluth in the State of Minnesota, the company would not have been entitled to select the lands as part of the grant if the decision of the Secretary as to the eastern terminus of the company's road had been right, but it was entitled to select them, as the true terminus of said road as it was afterwards decided was at Ashland, Wisconsin. In consequence of the erroneous ruling of the Secretary of the Interior as to the eastern terminus of the railroad, the lists of selections aforesaid have

never as yet been approved by the Secretary of the Interior but after such erroneous decision was made, in the year 1896, the Secretary of the Interior caused the entries of said lands by the company to be cancelled, declared the lands open to settlement and entry, and proceeded to issue final receipts and final certificates, and, in some instances, patents for said lands, to the appellees or their grantors, under the public land laws of the United States, holding that the railroad company had no right thereto.

III.

Prior to the passage of the act of July 1, 1898, the Secretary of the Interior had, pursuant to his erroneous ruling relative to the eastern terminus of the railroad in question, caused patents to be issued and delivered to the appellees or their grantors for about thirty-four hundred (3400) acres of the lands in question in this suit.

IV.

At the time of the passage of the act of July 1, 1898, (30 Stat. 621) about 2800 acres of the land in question in this suit had been entered by the appellees or their grantors prior to January 1, 1898, but no patents therefor had been issued.

V.

Since January 1, 1898, the appellees or their grantors have been permitted to enter about 5000 acres of the lands in controversy in this action. The situation at the time of the filing of the bill of complaint herein was as follows: Of the lands claimed by the appellants as successors in interest of the Northern Pacific Railroad Company about 3400 acres thereof were held by the appellees under patents issued by the Government prior to July 1, 1898. For the residue of the lands the appellees held final receipts and final certificates. Such final receipts and final certificates as respects about 5000 acres being for tracts of land that were entered subsequent to January 1, 1898. As respects the lands for which final receipts and final certificates have been issued nothing, so far as appears, remains to be done by the executive department of the Government save the issuance of patents.

VI.

The Northern Pacific Railroad Company accepted the terms and provisions of the act of July 1, 1898, by a resolution duly enacted and approved by its board of directors, and subsequently and before the commencement of this suit all of its right, title and interest in all of the lands in question was duly conveyed to, and vested in the appellants.

And the United States circuit court of appeals hereby certifies that to the end that it may properly decide this case it desires the advice and instruction of the Supreme Court of the United States upon the following questions of law, which are duly raised and presented by the record herein and the decision whereof is necessary to a correct determination of the case:

1. Is the act of July 1, 1898, (*vide* 30 Stat. pp. 620, 621) applicable to the determination of the rights of the parties to the 3400 acres of land aforesaid which were patented to the appellees or their predecessors in interest prior to the adoption of the act of July 1, 1898?

2. Has the circuit court of the United States for the district of Minnesota or any court *of* jurisdiction as respects the lands in controversy entered subsequent to January 1, 1898, and for which the appellees hold final receipts or certificates, to adjudicate the rights of the parties to this action in respect to said lands in advance of the issuance of patents therefor by the executive branch of the Government, or should the courts decline jurisdiction until the Government has divested itself of the legal title to the lands by the issuance and delivery of patents?

In witness whereof, the undersigned judges of the said United States circuit court of appeals for the eighth circuit have hereunto set their hands this 16th day of June, 1902, at St. Paul in the State of Minnesota and hereby order and direct that the foregoing certificate be filed in said circuit court of appeals and that it be forwarded by the clerk of said court to the Supreme Court of the United States.

(Signed) WALTER H. SANBORN,
AMOS M. THAYER,
JOHN E. CARLAND,
Judges of the United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals for the Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing certificate in the case of John A. Humbird and Frederick Weyerhaeuser, appellants, *vs.* Waldo A. Avery, *et al.*, No. 1673, May term, 1902, was duly filed and entered of record in my office by order of said court and as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereof.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States circuit court of appeals for the eighth circuit, at the city of St. Paul, Minnesota, this sixteenth day of June, A. D. 1902.

(Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court
of Appeals for the Eighth Circuit.

(*Order for Injunction.*)

And on the sixteenth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order for injunction in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *June* 16, 1902.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,

vs.

WALDO A. AVERY, GEORGE B. MORLEY, OLEAN Land Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl, C. M. Hill Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of West Virginia; June B. Noyes, Isaac Henry, Joseph Nevins, Benjamin Grimm, Chris Johnson, Peter Bohan, Elizabeth Peterson, Angie C. Thompson, Edward J. Heath, Daniel Maher, Didrik Johnson, Frank W. Eaton, Stephen Thomas, Walter G. Grimmer, Waldo A. Avery, Trustee; Michael Kelley, Otto Carlson, Alger, Smith & Company, a Corporation Organized and Doing Business under the Laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser, Norris Realty Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien, Franklin Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; S. J. Cusson, Johnson-Wentworth Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Cloquet Lumber Company, a Corporation Organized and Doing Business under the Laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as Copartners Doing Business under the Firm Name of Mitchell & McClure, Appellees. } No. 1673.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause was argued and submitted to this court for consideration on the fourteenth day of May, A. D. 1902. It involves the decision of grave questions of law which have been certified to the Supreme Court for determination. Considerable time must elapse before a final determination of the rights of the parties to the title of the lands in question in this suit can be reached and it is important that meanwhile the lands remain in the same condition in which they now are. Upon due consideration,

It is ordered and adjudged that a writ of injunction issue out of and under the seal of this court directed to the appellees, their grantees, agents and servants, which shall command and strictly enjoin them and each of them to refrain from cutting or removing from any of the lands described in Exhibit A to the bill herein any timber or wood standing or lying thereon and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of the court.

(*Writ of Injunction.*)

And on the second day of August, A. D. 1902, a writ of injunction was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America to Waldo A. Avery, George B. Morley; Orlean Land Company, a corporation organized and doing business under the laws of the State of Minnesota; Joseph L. Picotte, John J. Rupp, Fred P. Brewer, W. C. McClure, Ezra Richardson, Charles McIlhargey, Le Roy Brooks, John B. Kehl; C. M. Hill Lumber Company, a corporation organized and doing business under the laws of the State of Michigan; Justin Wentworth, George K. Wentworth, Herbert H. Hoyt, John R. Randall, Konrad Erickson, Bertha M. Randall, Martin L. Fraser; Norris Realty Company, a corporation organized and doing business under the laws of the State of Minnesota; Lucina A. Sylvester, Justus H. McLaughlin, Lesure Lumber Company, Edward B. Manwaring, B. C. Cooke, William O'Brien; Franklin Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; S. J. Cusson; Johnson-Wentworth Company, a corporation organized and doing business under the laws of the State of Minnesota; Cloquet Lumber Company, a corporation organized and doing business under the laws of the State of Minnesota; Jethro G. Mitchell, Le Roy Brooks, and W. C. McClure, as copartners doing business under the firm name of Mitchell and McClure, Greeting:

Whereas, in a certain suit in the United States circuit court of appeals for the eighth circuit removed there by the appeal of the complainants from the circuit court of the United States for the district of Minnesota, in which latter court John A. Humbird and Frederick Weyerhaeuser were complainants and you are respondents in chancery.

And whereas, the said circuit court of appeals by its order entered in this cause on the sixteenth day of June, A. D. 1902, ordered and directed that certain questions of law arising upon the face of the record herein be certified to the Supreme Court of the United States for the instruction of that court thereon, in pursuance of the provision of the act of Congress approved March 3, 1891, and by its further order also directed that an injunction issue herein pending the final determination of the rights of the parties to the title of the lands in question in this suit.

You and each of you, your grantees, agents and servants are hereby commanded and strictly enjoined to refrain from cutting or removing from any of the lands described in Exhibit A to the bill of complaint herein, any timber or wood standing or lying thereon, and from in any other way changing the state and condition in which such lands and the timber thereon now are until the final decision of this case or the further order of this court, and this you shall in nowise omit at your peril.

To the marshal of the United States for the district of Minnesota to execute and make due return.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this sixteenth day of June, A. D. 1902.

Issued at office in the city of St. Paul, Minnesota, in the eighth circuit, under the seal of said United States circuit court of appeals, the day and year last above written.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

United States Circuit Court of Appeals, Eighth Circuit.

JOHN A. HUMBIRD and FREDERICK WEYERHAEUSER, Appellants,
vs.
WALDO A. AVERY ET AL., Respondents.

Service, on behalf of all the defendants in the above-entitled cause for whom we have appeared and answered, of the within writ of injunction, by copy thereof, is hereby admitted at the city of Duluth, Minnesota, this 23rd day of July, 1902.

H. H. HOYT,
Attorney for All Defendants for Whom We Have Appeared and Answered.
JAQUES & HUDSON,
Attorneys for All Defendants for Whom We Have Appeared and Answered.
JOHN G. WILLIAMS,
Attorney for All Defendants for Whom We Have Appeared and Answered.
M. H. STANFORD,
Attorney for All Defendants for Whom We Have Appeared and Answered.
L. C. HARRIS,
Attorney for All Defendants for Whom We Have Appeared and Answered.

(Endorsed:) U. S. circuit court of appeals. Eighth circuit. May term, 1902. No. 1673. John A. Humbird, *et al.*, appellants, *vs.* Waldo A. Avery, *et al.* Writ of injunction. Filed Aug. 2, 1902. John D. Jordan, clerk.

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing twelve pages contain full, true and complete copies of all the pleadings, record entries and proceedings in the United States circuit court of appeals for the eighth circuit (except the transcript of the record from the circuit court of the United States for the district of Minnesota) in a certain cause in said court wherein John A. Humbird and Frederick Weyerhaeuser are appellants, and Waldo A. Avery, *et al.*, are appellees, No. 1673, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at the city of St. Louis, Missouri, in the eighth circuit, this eighth day of October, A. D. 1902.

[SEAL.] (Signed) JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.